

Metro Health Foundation, Inc., and Metro Health Foundation—Midwest, Inc. d/b/a Cheboygan Health Care Center and Local 79, Service Employees' International Union, AFL-CIO. Case 7-CA-45347(4)

March 14, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and amended charge filed on September 12 and 13, 2002, respectively, the General Counsel issued the complaint on September 24, 2002, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union's request to bargain and to furnish relevant and necessary information following the Union's certification in Case 7-RC-22253. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and raising certain affirmative defenses.

On October 16, 2002, the General Counsel filed a Motion for Summary Judgment. On October 21, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the certification based on its contention, raised and rejected in the representation proceeding, that the certified unit is inappropriate for purposes of collective bargaining under the Act. Specifically, the Respondent renews its argument that the unit is inappropriate because it is comprised of registered nurses, whom the Respondent maintains are statutory supervisors. The Respondent also admits its refusal to provide the information requested by the Union, but, relying on its claim that the Union was not properly certified, denies that it had any legal obligation to do so.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special cir-

cumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.¹ See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The Union requested the following information from the Respondent by letters dated August 13 and September 4, 2002:

(1) A list of all bargaining unit workers, including: name, shift, full-time/part-time/contingent status (including the number of hours of work per week); rate of pay; date of hire; home address; home phone and social security number.

(2) The Nursing Home's three most recent Form 990's filed in lieu of taxes including Metro Health Foundation, Inc., Metro Health Foundation – Midwest, Inc. and any/all subsidiary corporations.

(3) A copy of the Employer's handbook, personnel policies and work rules.

(4) Copies of all health insurance policies that the Employer provides.

(5) Copies of any other insurance programs that the Employer may carry (life, dental, vision, sickness and accident . . .), plus the number of employees participating and monthly cost of each.

(6) A list of all employees that have health insurance coverage by category (individual, individual plus one, family . . .), plus the respective monthly premium rates.

(7) A copy of the three most recent OSHA 200 logs.

(8) Information on any pension plans or retirement savings accounts that are made available to the workers, plus the appropriate summary documents.

(9) A copy of the job description for the bargaining unit classification.

(10) A copy and explanation of the current pay structure at the Nursing Home and the basis for the pay structure (e.g., pay based on salary, hourly, etc.).

(11) A listing of the Nursing Home's sources of funding (Medicare, Medicaid, private pay) for the last three fiscal years with the corresponding funding amounts and the supporting documentation.

¹ Chairman Battista and Member Schaumber did not participate in the underlying representation proceeding. They find, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding.

(14) Copies of the Nursing Home's budget for the last three fiscal years and the projected for the next fiscal year.

It is well established that, with the exception of employee social security numbers requested in paragraph 1 and the financial information requested in paragraphs 2, 11, and 12, all of the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request.² See, e.g., *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); *Trustees of the Masonic Hall*, 261 NLRB 436, 437 (1982); and *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977). The Respondent has not provided any basis for rebutting this presumption.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested, with the exception of employee social security numbers and the financial information sought by the Union in paragraphs 2, 11, and 12 of its information requests.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business at 824 South Huron Street, Cheboygan, Michigan (the Cheboygan facility), has been engaged in the operation of a nursing home, providing long-term, residential medical care. During the calendar year ending December 31, 2001, the Re-

² The Board has held that employee social security numbers and certain types of financial information, including IRS Form 990, are not presumptively relevant and that the Union must therefore demonstrate the relevance of such information. See, e.g., *Grand Court-Adrian Associates*, 331 NLRB 806 fn. 1 (2000) (summary judgment denied with respect to IRS Form 990 and other financial information); and *Dexter Fastener Technologies*, 321 NLRB 612, 613 fn. 2 (1996) (summary judgment denied with respect to social security numbers and financial information). Here, the pleadings fail to indicate why the Union wanted the social security numbers or the IRS Form 990 and other financial information, or to otherwise indicate the relevance of this information. Accordingly, we cannot conclude, on the pleadings, that the Respondent was obligated to provide this information to the Union and we therefore deny the motion for summary judgment with respect to the Respondent's alleged failure to do so, and remand that issue to the Regional Director for further appropriate action. This does not excuse the Respondent's failure to supply all of the other information requested by the Union however. Such information is clearly relevant, and the Respondent's failure to provide the information on request violated Sec. 8(a)(5) of the Act. See *id.* In so finding, we construe the Union's request for such information as pertaining to unit employees, although the information requested is not consistently described in these specific terms. See *Freyco Trucking, Inc.*, 338 NLRB 787 fn. 1 (2003).

spondent, in conducting its business operations, received gross revenue in excess of \$1 million. During the same period of time, the Respondent purchased and received goods valued in excess of \$50,000 from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time, and contingent registered nurses employed by the Employer at its facility located at 824 South Huron Street, Cheboygan, Michigan; but excluding all office clerical employees, unit coordinators, restorative coordinator, staff development coordinator/instructor, MDS coordinators, guards and supervisors, as defined in the Act, and all other employees.

On August 9, 2002, the Union was certified as the exclusive collective-bargaining representative of the employees in the unit. At all times since August 9, 2002, based on Section 9(a) of the Act, the Union has been the exclusive representative of the unit employees.

B. Refusal to Bargain

About August 13 and September 4, 2002, the Union, by letter, requested the Respondent to bargain and to furnish information, and, since September 10, 2002, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after September 10, 2002, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respon-

dent to furnish the Union the information requested, with the exception of employee social security numbers and the financial information sought by the Union in its information requests.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Metro Health Foundation, Inc. and Metro Health Foundation—Midwest, Inc. d/b/a Cheboygan Health Care Center, Cheboygan, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 79, Service Employees International Union, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time, and contingent registered nurses employed by the Employer at its facility located at 824 South Huron Street, Cheboygan, Michigan; but excluding all office clerical employees, unit coordinators, restorative coordinator, staff development coordinator/instructor, MDS coordinators, guards and supervisors, as defined in the Act, and all other employees.

(b) Furnish the Union information it requested on August 13 and September 4, 2002, with the exception of employee social security numbers and financial information.

(c) Within 14 days after service by the Region, post at its facility in Cheboygan, Michigan, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 10, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain with Local 79, Service Employees International Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time, and contingent registered nurses employed by us at our facility located at 824 South Huron Street, Cheboygan, Michigan; but excluding all office clerical employees, unit coordinators,

restorative coordinator, staff development coordinator/instructor, MDS coordinators, guards and supervisors, as defined in the Act, and all other employees.

WE WILL furnish the Union the information it requested on August 13 and September 4, 2002, with the exception of employee social security numbers and financial information.

METRO HEALTH FOUNDATION, INC. AND
METRO HEALTH FOUNDATION—MIDWEST, INC.
D/B/A CHEBOYGAN HEALTH CARE CENTER